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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1953

NO. 489

HOWARD SEABOY TICKLE, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF PETITION

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NO.---------

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA AND BRIEF IN SUPPORT OF PETITION

PETITION FOR WRIT OF CERTIORARI

The petitioner, Howard Seaboy Tickle, most respectfully petitions this Honorable Court for a Writ of Certiorari to the Supreme Court of North Carolina in his above named case.

STATEMENT OF THE MATTER INVOLVED

This criminal action, tried in a State Court before a jury for the non-support of a bastard under the General Statutes of North Carolina (G. S. 49-2) presents serious questions relating to petitioner's constitutional rights under the Due Process Clause of the 14th. Amendment of the Constitution of the United States and to the unconstitutionality of the General Statutes of N. C., (G. S.

49-2, and G. S. 49-3) concerning non-support of illegitimate children by their parents, the jurisdiction of the State Courts being brought in question on the grounds that no crime has been committed within the State of North Carolina,—the defendant being a resident and citizen of, and domiciled within the State of Virginia, (and a non-resident of N. C.) throughout the entire period he was having sexual relations with the prosecutrix in Virginia and that all of the sexual relations took place within the State of Virginia, and that there, the State of Virginia's law (which was admitted in evidence (R. pp. 18-26) imposes no liability, responsibility, or penalty, either civil or criminal, upon the father for the support of his illegitimate child.

Petitioner was charged in a warrant sworn out on July 20-1951 before the Recorder's Court of Caswell County, N. C. at Yanceyville, with the non-support of an illegitimate child begotten upon the body of prosecutrix, Ruby E. Hamlett, and born June 17-1951 (R. p. 3); the defendant, being a non-resident of N. C., could not be found within the State of N. C. for service of the warrant, so the State authorities of N. C., at the instance of the prosecutrix, caused Application for Extradition of the defendant under said warrant to be made to the Governor of Virginia and in August 1951 the Governor of Va. held the Extradition hearing in Danville, Va. (the prosecutrix going over to Danville, Va., from Caswell County, N. C., with her attorney from Yanceyville, N. C. being present) where she testified. The Application was thrown out (R. p. 17, Carter witness). The grounds and reasons for denying the Application were that the defendant was a non-resident of the State of N. C., and was a resident of Virginia and had never been within the State of N. C. and was not a fugitive from justice from N. C., and further that all of the acts of sexual inter-

course were committed within the State of Va. (whose law imposes no obligation or penalty upon the father of an illegitimate child, either civil or criminal, to support the child) and the mother, who was living in Va. had left Va. and come over to Caswell County, N. C. voluntarily and of her own free will and accord and for the sole purpose of having the baby, that no laws of N. C. or of the State of Va. had been violated.

The old warrant thus laid dormant in N. C. until about Dec. 19-1951, when the defendant, while returning that day by automobile to his home in Virginia from a days hunting trip over in Caswell County, N. C., accidentally drove his car off of the public highway in Caswell County, N. C. about 6 miles inside Caswell County from the Va. State boundary line, and was arrested in Caswell County, N. C. for reckless driving in Caswell County, and, while under arrest for that charge, was also arrested by the same officer at the same time, under the old warrant for non-support.

He was tried on Jany. 22-1952 on the old warrant for non-support in the Caswell County Recorder's Court and plead not guilty, was found guilty, judgment was entered, sentencing the defendant to the common jail of Caswell County for six (6) months, etc. (R. p. 5); bond was given and the case appealed to the Superior Court.

At the February 1953 Special Term of the Superior Court of Caswell County, N. C. before a jury the defendant was tried, and during this Term, and just before trial, the Solicitor for the State procured a true bill before the grand jury, laying the offense of non-support as having occurred on the 25th. of Dec. 1951 rather than on and after the child's birth (June 17-1951 as charged in the old warrant, and the State (Solicitor) thus elected, while in the progress of the trial, to go to trial on the Bill of Indictment (R. p. 13) rather than on the old warrant.

The Defendant pleaded not guilty and offered evidence of the Virginia law (R. pp. 18-26). At the close of all the evidence the defendant filed a "MOTION TO DISMISS ACTION" on five (5) grounds (R. p. 31), therein fully set forth. This motion was overruled and defendant excepted (R. p. 32). The jury returned a verdict of guilty, finding also that the defendant was the father of the child. Judgment was rendered, sentencing the defendant to the common jail of Caswell County for six (6) months, etc. (R. p. 52) and defendant appealed to the Supreme Court of N. C., assigning errors.

In the Supreme Court of N. C. the defendant on June 23-1953 filed another or additional Motion entitled "MOTION TO DISMISS FOR WANT OF JURISDICTION", (which Motion appears in the additional Transcript of Record certified up by the Clerk of the Supreme Court of N. C.) challenging, among other things, the Court's jurisdiction on the grounds that the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. had been violated.

The Supreme Court of N. C. heard this case on appeal and on Sept. 23-1953 rendered its opinion denying error, and affirming the Judgment of the Superior Court, and held that G. S. 49-2, and G. S. 49-3, were constitutional and applied to the case at bar, and further held that the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. was not violated or offended. It also overruled defendant's "MOTION TO DISMISS FOR WANT OF JURISDICTION".

THIS COURT HAS JURISDICTION

This Court has jurisdiction of this case under Section 1257 (3) of the United States Judicial Code (U. S. Code, Title 28, Section 1257 (3) "Judiciary and Judicial Procedure".

The Supreme Court of North Carolina decided this case on Sept. 23-1953, and certified its decision on October 5th, 1953.

THE QUESTIONS PRESENTED

1. Can a father, whose sole domicile, residence, and citizenship is in the State of Virginia (whose laws impose no obligation or penalty upon a father, either civilly or criminally, to support his illegitimate child) be convicted in North Carolina under its General Statutes (G. S. 49-2, and G. S. 49-3) of the wilful non-support of an illegitimate child, when its mother (the prosecutrix) was likewise living in, residing, and a citizen of the State of Virginia, and where all of the acts of sexual intercourse between the child's parents took place within the State of Virginia and where the mother came over into North Carolina (Caswell County) voluntarily and of her own free will and accord and without any suggestion, request, plan, or arrangement from the father in Virginia to do so, and for the sole purpose of giving birth to the illegitimate child at her aunt's home in Caswell County.?

2. If so, are said General Statutes of North Carolina, (G. S. 49-2, and G. S. 49-3) violative of, repugnant to, and unconstitutional under, the Due Process Clause of the 14th. Amendment of the Constitution of the United States, and is the trial had and Judgment rendered in North Carolina violative of said Due Process Clause.?

3. Did the Supreme Court of North Carolina err when, under Article 4, Section 1 of the Constitution of the United States, and under the United States Revised Statutes, Section 905 (28 U.S.C.A. § 1738 they failed in this case to recognize the applicability of and failed to give FULL FAITH AND CREDIT to the law of Virginia relative to the non-liability of a father in Virginia to support his illegitimate child.?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

Most important and far reaching questions involving the defendant's Constitutional rights under the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. to a trial in a State Court before a jury are here presented. The defendant has been deprived of his rights and liberty without Due Process of Law.

The reasons relied upon and strenuously urged by the Petitioner for the allowance of a Writ of Certiorari are; (1) that Petitioner's constitutional rights under the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. have been ignored and violated by the State of N. C., and that the trial, with Judgment and sentence pronounced therein, are repugnant to and in violation of the Due Process Clause; (2) that no crime has been committed by the defendant within the State of North Carolina,—he being a non-resident of N. C. all of the time and was never within the State of N. C. until about Dec. 19-1951 which date was four (4) months subsequent to the date the warrant was sworn out in N. C. on July 20-1951 and that the prosecutrix, Ruby E. Hamlett (also during the time in question, and while she was having the alleged sexual relations with the defendant, within the State of Virginia) was a resident and citizen of and working and living within the State of Virginia, and that she came over into North Carolina for the sole purpose of giving birth to the illegitimate child, which was born in N. C., and that she came over to North Carolina voluntarily and of her own free will, and accord and without any request, instruction, plan, or arrangement from the defendant to do so, and the State of Virginia's law imposes no obligation or penalty whatever upon the father of an illegitimate child, either civil or criminal, to support the child,—the Common Law be-

ing the prevailing law in Virginia; (3) that the Bastardy Statutes of N. C. (G. S. 49-2, and G. S. 49-3) are not applicable to non-residents of North Carolina and are not applicable to the defendant in the case at bar and are unconstitutional and void, and that the Supreme Court of N. C. committed gross error in holding and decreeing that these Statutes are constitutional; (4) that the Supreme Court of N. C. erred in that, under Article 4, Section 1 of the Constitution of the U. S., and also under the U. S. Revised Statutes, Section 905 (28 U. S. C. A. § 1738,) they failed in this case to recognize the applicability of and failed to give FULL FAITH AND CREDIT to the law of Virginia relating to the non-liability of a father in Virginia to support his illegitimate child; (5) that the State of N. C. did not have jurisdiction over the defendant and over the subject matter in this action.

That defendant's conviction violates those fundamental rights and immutable principles of justice which are embraced within the conception of the DUE PROCESS OF LAW.

That the question of the validity and constitutionality of the General Statutes of North Carolina, (G. S. 49-2, and G. S. 49-3) under the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. was challenged and set up by the defendant in the Supreme Court of N. C. as well as in all of the lower Courts of the State, and that objection to said G. S. 49-2, and G. S. 49-3, was placed on Federal Constitutional grounds under the 14th. Amendment of the Constitution of the U. S., and that the Supreme Court of N. C. in its opinion, handed down on Sept. 23-1953, found no error and rendered Judgment affirming the Judgment of the Superior Court and held that said General Statutes of N. C. were constitutional and did not run counter to the Due Process Clause of the 14th. Amendment. That a decision up-

on the Federal Constitutional question raised, was necessary to be determined and passed upon by the Supreme Court of N. C. in order to decide this case on appeal and that this Federal Constitutional question was decided adversely to the defendant and that the final Judgment therein entered by said Court could not have been rendered without deciding this Constitutional question involved.

The decision and opinion of the Supreme Court of N. C. revolves around principally the question of "Constructive Presence", and "Good Morals and Christian Principles". The court said; "There is a Constructive Presence of the defendant in this jurisdiction FOR BY HIS LUST IN VIRGINIA HE BEGOT A BASTARD CHILD UPON THE BODY of Ruby Elizabeth Hamlett, AND THEREBY PUT IN OPERATION A FORCE WHICH PRODUCED A RESULT OF HIS BASTARD CHILD" etc. Petitioner most respectfully submits that this is not sound legal reasoning and will not stand up under a fair legal test. In a bastardy case in 326 Mass. 559 Commonwealth vs. Lanoue; 95 NE (2nd.) 925, the court properly and aptly said and held "Here the begetting was completed in Rhode Island. The subsequent birth of the child was not an element in and formed no part of the offense. At most it furnished proof that at some previous time the act in question had been committed".

The N. C. Supreme Court further speaks of the begetting of the Illegitimate child in Virginia, "producing the result of his (defendant's) wilful failure to support his bastard child in North Carolina, which is a crime under our law, G. S. 49-2". Defendant submits that it is not a fair or reasonable presumption or assumption in law in this case to pressure or assume that at the time the defendant engaged in sexual relations

with the prosecutrix in Virginia which caused the pregnancy in Virginia in question, that he, at that time, intended that the sexual act would produce or cause pregnancy, and then also go further and presume or assume at that time that the prosecutrix (mother) would later go, or have to go, into the State of North Carolina in order to give birth to the child. Petitioner submits that in the realm of civil law, much less in the realm of criminal law, that such a result was not a reasonably foreseeable consequence of the sexual act, and in a civil case it would not be considered a proximate result of the sexual act.

The Supreme Court of N. C. cites, and discusses at some length, the case of State vs. Kriss (191 Md. 568; 62 A. (2nd.) 568) but it will readily be seen from reading that case that it is not at all in point; there the "Uniform Criminal Extradition Act" which was enacted into law by the State of Maryland, and also by the State of N. C. under G. S. 15-60, was being considered in a Habeas Corpus Proceeding where Sam Gildar was under indictment and under arrest in Maryland, charged with a conspiracy there instigated and there put in motion to violate the prohibition laws of North Carolina, and where a warrant also was issued in N. C., and Sam Gildar's custody was demanded by the Governor of N. C. under Extradition Proceedings instituted in Maryland and the Governor of Maryland granted the custody and the Maryland Court there in this opinion said "The warrant of the Governor of Maryland issued after a hearing, recites that it appears that petitioner had committed an act IN THIS STATE INTENTIONALLY RESULTING IN A CRIME IN THE DEMANDING STATE". There, in Maryland, a crime (conspiracy) was formed and put in operation INTENTIONALLY resulting in a crime in the demanding State (North Carolina) and the case of 221 U. S. 280 (285) Strasshein vs.

Daily, is cited and quoted from. But what a difference between the facts in that case (State vs. Kriss) and the case at bar. There the crime and acts complained of were in violation of the laws of Maryland and of North Carolina, while in the case at bar the acts committed within Virginia were perfectly lawful in every way and therefore, there was not, and there could not be, an intention to violate the bastardy laws of North Carolina; in the case at bar the Governor of Virginia held, in the Extradition hearing held in Danville, Va. in August 1951, that the defendant had not violated any law in Virginia or in the State of North Carolina, and therefore refused to honor the Application for Extradition from the Governor of North Carolina.

The defendant was not guilty of any "misconduct" within the State of Virginia as shown by the Record, and if there was no misconduct engaged in within the State of Virginia then, under no aspects of the case at bar can the defendant's acts in law be considered or treated as "misconduct" within the State of N. C.

The opinion of the Supreme Court of N. C. clearly shows that the idea of "Good Morals and Christian Principles" in a modern Christian State unduly and sympathetically influenced the mind of the Court and caused it to let this idea overpower and outweigh the big fundamental, basic, constitutional rights and constitutional questions which should have controlled the decision of the court. This fact is plainly seen when the Court says; "Recognizing that the Common Law Rule is not adapted to the public opinion of a modern Christian State and that a poor innocent child should not be suffered to famish as a victim of his father's lust, unless supported at the public charge or by charity, statutes in most States impose on the father the legal duty to support his bastard child, 10 C. J. S. p. 86". But the sovereign State of Virginia

thinks otherwise and it does not lie in the mouth of the Courts of another sister State to unjustly criticize and condemn Virginia because it has followed a different idea of justice and a different legal course by adopting the Common Law Rule as to bastards which has prevailed as the law in that jurisdiction for over three-quarters of a century, namely, since 1874-75.

The Supreme Court of N. C. further says "We realize that the cases of a husband's failure to support his wife or legitimate child DO NOT PRESENT THE EXACT FACTS BEFORE US, but they are cited by analogy". Petitioner submits that there is no analogy in the many cases cited and referred to by the Supreme Court of N. C., to the case at bar. One class deals, (where there has been a marriage) with the husband and his wife and children and where there is binding upon both parents the legal obligation to support, etc., while the other class deals with immoral relations between a man and a woman, un-married, with their offspring illegitimate, and, as at Common Law, with no liability upon the father to support under the Virginia law.

The Supreme Court of N. C. also cites, and quotes from the case in 24 S. D. 636 State vs. Etter; 124 NW 957, but there again the case is not in point. There the defendant was a resident of Spink County, South Dakota, and the illegitimate child was begotten during Sept. 1907 in Hughes County, South Dakota, where the prosecutrix (Mother) was then residing and employed as a domestic; afterwards she went to reside with her parents in the State of Minnesota where she and the child since remained. At the time this bastardy proceeding was commenced the defendant was a resident of Redfield, Spink County, South Dakota. The State of South Dakota had a criminal bastardy statute and that Court, in construing that Statute, held that there was no condition

precedent in the South Dakota Statute requiring either the mother or the illegitimate child to be a resident of the State of South Dakota in order to bring the indictment in South Dakota, where the defendant resided and where the child was born; there, the child was begotten within the State of South Dakota where this suit was instituted, while in the case at bar the child was begotten within the State of Virginia and the suit was instituted in the State of N. C.; then again South Dakota has a bastardy law applicable to its citizens in cases instituted against its citizens residing in that State, while in the case at bar Virginia has no bastardy law whatever.

We think the Supreme Court of N. C. was correct in making this statement; "We have found no case embodying the exact facts of this case, nor have counsel for the State or the defendant in their briefs referred us to any such cases". The absence of such a case in the law books is strong proof, in petitioner's opinion, that no State has heretofore dared to challenge well defined and well recognized constitutional principles of the law, as has been done by the State of North Carolina in the case at bar.

The Supreme Court of N. C. further states that the Court had jurisdiction over the subject matter charged in the indictment and that the defendant was present in person in this jurisdiction during his trial and with counsel, but in saying this it was unmindful of the facts hereinabove set forth or referred to, and to the basic constitutional questions therein involved and applicable.

The Supreme Court of N. C. holds that G. S. 49-2, and G. S. 49-3, are constitutional and cites in support, in that jurisdiction, the case in 210 N. C. 271 State vs. Spillman, and there it will readily be seen that the facts are not at all similar to the case at bar, and this case is not

in point. There all of the parties were residents of and were living within the State of N. C., and there was no other or outside State involved where sexual relations came into the picture as we have differently in the case at bar; in that case the defendant offered no evidence while in the case at bar the defendant offered evidence of and proved the Common Law governing in the State of Virginia; in that case all of the acts of sexual intercourse took place within the State of North Carolina while in the case at bar all of the acts of sexual intercourse took place in Virginia; there, (while the Due Process Clause was raised and set up by the defendant, who contended that the General Statute of N. C. G. S. 49-2, contravened the Due Process Clause) it was set up on entirely different grounds and for other reasons. Petitioner contends that the State of N. C. has no extra-territorial jurisdiction in the premises under G. S. 49-2 and under G. S. 49-3, and that it cannot make or declare that a crime in North Carolina which is not a crime and that any attempt to do so is unconstitutional and does violence to the Due Process Clause. Petitioner cites and relies on the case in 290 U. S. 203 Yarbrough vs. Yarbrough as decisive of the Due Process Clause question herein raised, Syllabus 6, of that case saying "The fact that the child became a resident of the other State (South Carolina) did not enable that State (South Carolina) to impose additional duties on the father, who is and who continued to be domiciled in Georgia".

The Supreme Court of N. C. further held that the Virginia law relative to the non-liability of a father to support his illegitimate child has no application, saying; "Whether under the Virginia law a father is required or not required to support his bastard child is not involved". Petitioner contends that this holding does violence to the Due Process Clause of the 14th. Amend-

ment of the Constitution of the U. S. as well as to the Full Faith and Credit Clause of Article 4, Section 1 of the Constitution of the U. S., and also to U. S. Revised Statutes, Section 905 (28 U. S. C. A. § 1738).

The Supreme Court of N. C. further, speaking of the prosecutrix says; "in her sore distress the only place she had to return to was Caswell County" etc. Petitioner contends that if she was obliged to leave Virginia to have the baby, that fact did not place or throw any responsibility upon the defendant to provide for the support of the illegitimate child in N. C. when he was under no legal obligation or responsibility whatever in Virginia to support the child over there before the mother left.

Petitioner has found no case from North Carolina, or from any other State or jurisdiction, cited by the Supreme Court of North Carolina, that is in point or controlling, in its relation to the case at bar.

Respectfully submitted,

WM. REID DALTON, *Attorney*
For Petitioner

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OCTOBER TERM, A. D. 1953

NO.----------

HOWARD SEABOY TICKLE, *Petitioner,*

vs.

STATE OF NORTH CAROLINA, *Respondent*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion Below

The opinion of the Supreme Court of North Carolina in this case, handed down on Sept. 23-1953, has been certified up to this Court and is printed in the Transcript of Record, accompanying this Petition For Writ of Certiorari, and said opinion is herein referred to and made a part of this BRIEF the same as if it were herein reprinted and appeared herein.

JURISDICTION

The jurisdiction of this Court is involved under Section 1257 (3) of the United States Judicial Code (U. S. Code Annotated, Title 28, Section 1257 (3), The Supreme Court of North Carolina has decided a case

"where the validity of a State Statute is drawn in question----------on the ground of its being repugnant to the Constitution---------- or laws of the United States".

Judgment was entered in this case by the Supreme Court of North Carolina on Sept. 23-1953.

STATEMENT OF THE CASE

Ruby Elizabeth Hamlett, the prosecutrix, and unmarried (now 24 years of age and 3 years older than the defendant) went from Caswell County, North Carolina in August 1947 over to Schoolfield, Va., and Danville, Va., to work in mill and she came home every night up until the first of 1949 when she engaged room and board over there in Virginia, and thereafter she lived, worked, resided, and made her home (domicile) in Schoolfield and Danville, Va. up until March 1st, 1951 when she returned to Caswell County, N. C., to her aunt's home, Mrs. B. R. Wall, for the sole purpose of giving birth later to her illegitimate child which was born in Caswell County, N. C., on June 17-1951; in Aug. 1949 she commenced going with the defendant, who likewise worked, lived, resided, and made his home (domicile) in Virginia with his father, who is a farmer; About Oct. 1950 she started having sexual relations with the defendant in Virginia (R. p. 10) which continued with the defendant in Va. until about two months after she became pregnant in Oct. 1950 (R. p. 10), and in February 1951 they stopped going together (R. p. 10).

On July 13-1951 she wrote a registered letter from her attorney's office in Yanceyville, N. C., addressed to the defendant at his home address, RFD No. 1, Danville, Va. advising him of the birth of the child and requesting that the defendant meet her on July 20-1951 at her attorney's office in Yanceyville, N. C., to make arrange-

ments about the support of the child; (See letter R. p. 8); the defendant made no reply to this letter, had no communication whatever with her and he did not go to Yanceyville as requested on July 20-1951 on which date she swore out a warrant against the defendant in Recorder's Court of Caswell County, N. C. for non-support of the child. The defendant had no communication or contact with the prosecutrix from March 1,1951 (when she left Va.) up until the time of the trial in the Recorder's Court on Jany. 22-1952 (R. p. 13) with the sole exception of the letter which she wrote him (R. p. 8).

Defendant was first tried on Jany. 22-1952 in the Recorder's Court, at Yanceyville, N. C., on the warrant charging non-support, under G. S. 49-2, where, through his counsel, he orally lodged Motion to dismiss the action on the grounds that the Court did not have jurisdiction over the defendant and over the subject matter and that any attempt to exercise jurisdiction was in violation of the Due Process Clause of the 14th. Amendment of the Constitution of the U. S., and that the Bastardy Statutes, G. S. 49-2, and G. S. 49-3, were unconstitutional and did not apply to non-residents and that the defendant was a non-resident of N. C. and that no crime had been committed within the State of N. C. etc. Defendant pleaded not guilty, was found guilty and sentenced to jail for six months, etc. (R. p. 5) and defendant's Motion to Dismiss was denied. Appeal bond was given and the defendant appealed to the Superior Court.

Defendant was next tried in the Superior Court of Caswell County at the February 1953 Special Term, before a jury, on a Bill of Indictment found at that Special Term, laying the offense as having occurred on the 25th. of Dec. 1951 rather than on June 17-1951 as charged in the old warrant. He pleaded not guilty and at the close

of all the evidence he filed a written "MOTION TO DISMISS ACTION" on five (5) grounds (R. p. 31). This Motion was overruled and defendant excepted (R. p. 32). The jury returned a verdict of guilty finding that the defendant was the father of the child. Judgment entered, sentencing the defendant to common jail of Caswell County, N. C., for a term of six (6) months, etc. (R. p. 52) and defendant appealed to the Supreme Court of N. C., assigning errors.

In the Supreme Court of N. C. defendant filed on June 23-1953 another or additional motion entitled "MOTION TO DISMISS FOR WANT OF JURISDICTION" (which Motion appears in the Transcript of Record certified up to this Court by the Clerk of the State Supreme Court), challenging again, among other things, the jurisdiction of the State Supreme Court on the grounds that the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. was being violated. The State Supreme Court on September 23-1953 rendered its judgment and opinion denying error, and affirmed the judgment of the lower (Superior) Court, and further held that the Due Process Clause was not violated or offended, and that the General Statutes of N. C. (G. S. 49-2, and G. S. 49-3) were constitutional. It also overruled and denied defendant's "MOTION TO DISMISS FOR WANT OF JURISDICTION".

GENERAL STATUTES OF NORTH CAROLINA—

Chapter 49, "BASTARDY", General Statutes of North Carolina (1943), now in question as being unconstitutional, are as follows;

"G. S. 49-2; *Non-support of illegitimate child by parents made misdemeanor—*"

"Any parent who wilfully neglects or who refuses to support and maintain his or her illegitimate child shall be guilty of a misdemeanor and subject to such penalties as are hereinafter provided. A child within the meaning of this article shall be any person less than fourteen years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain as if such child were the legitimate child of such parent".

G. S. 49-3; *Place of birth of child no consideration—*

"The Provisions of this article shall apply whether such child shall have been begotten or shall have been born within or without the State of North Carolina; Provided, that the child to be supported is a bona fide resident of this State at the time of the institution of any proceedings under this article.".

ERRORS RELIED UPON

1. The Supreme Court of North Carolina erred in affirming the Judgment and in holding that the State had jurisdiction, and in denying "MOTION TO DISMISS" and defendant's additional "MOTION TO DISMISS FOR WANT OF JURISDICTION" and in holding that the trial, with Judgment, are not in violation of, repugnant to, and unconstitutional under, the Due Process Clause of the 14th. Amendment of the Constitution of the United States.

2. The Supreme Court of North Carolina erred in holding and declaring that the General Statutes of North Carolina (G. S. 49-2, and G. S. 49-3) are constitutional and are applicable to the case at bar.

3. The Supreme Court of North Carolina erred, when, under Article 4, Section 1 of the Constitution of the United States, and under the U. S. Revised Statutes, Section 905 (28 U. S. C. A. § 1738) they failed to recognize the applicability of and failed to give FULL FAITH AND CREDIT to the law of Virginia relative to the non-liability of a father in Virginia to support his illegitimate child.

ARGUMENT

I

Court Had No Jurisdiction

The State did not have jurisdiction of this action or over the defendant, because, and for that, upon all of the evidence offered, it appears that no crime has been committed within the State of North Carolina, (1) the defendant never having been within the bounds of the State of North Carolina until he was arrested in Caswell County, N. C., on or about Dec. 19-1951 under the old warrant sworn out on July 20-1951 charging him with an offense on June 17-1951 alleged to have been committed within North Carolina; (2) the defendant had his sole domicile, residence, and citizenship within the State of Virginia, and (3) the prosecutrix (mother) was likewise living, domiciled, residing, and had her citizenship within the State of Virginia where all of the acts of sexual intercourse between said parties took place; (4) the mother came over to North Carolina (Caswell County) voluntarily and of her own free will and accord and without any suggestion, plan, arrangement, or request from the defendant to do so, and (5) for the sole purpose of giving birth to the illegitimate child at her aunt's home in Caswell County, N. C.; (6) under the Virginia law (which was offered and received in evidence (see Talbott, Attorney's letter, Affidavit,

R. p. 18, and the opinion of the Supreme Court of Appeals of Virginia in 183 Va. 353, Brown vs. Brown,; 32 SE. Rep. (2nd.) 79, (R. pp. 20-26) there is no obligation imposed on a father, either civil or criminal, to support his illegitimate child, of which the Superior Court took judicial notice. (R. p. 26).

The trial, with conviction and judgment, for the above and other reasons, are violative of and impinge the Due Process Clause of the 14th. Amendment of the Constitution of the U. S. and are therefore unconstitutional and void.

"In the U. S. each State constitutes a distinct and independent sovereignty, and that consequently the laws of one State do not operate in any other State "ex proprio vigore". (R. C. L. p. 910).

"The States are to be considered, with respect to each other, as independent sovereignties, etc." 1 N. C. 143 (at p. 144) State vs. Knight.

The Common Law Doctrine forbidding one State to extend the application of its laws beyond its territorial limits, including the rule forbidding punishment by a State for conduct beyond these limits, is, as between the States of the Union, not merely a matter of comity but a prohibition required by the Federal nature of our Union and demanded by both the Due Process Clause and the Full Faith and Credit provisions of its Constitution. 110 N. C. 588 S. vs. Cutshall; 165 U. S. 578 Algeyer vs. Louisiana, 41 Led. 832; 213 U. S. 52 Atchison, Topeka & S. F. R. Co. vs. Somers, 53 Led. 695; 234 U. S. 149 New York Life Ins. Co. vs. Head, 58 Led. 1259; 266 U. S. 389 Aetna Life Ins. Co. vs. Dunken, 69 Led. 342.

In 1 N. C. 143 State vs. Knight, (yr. 1799), (at p. 144) the Supreme Court of N. C. speaking of the State's

Legislative power to define and punish crimes committed within the State of N. C., whether by its citizens or strangers, said; "they cannot define and punish crimes committed in another State, the citizens of which, while they remain there are bound to regulate, their civil conduct *only according to their own laws*".

As to Territorial Jurisdiction petitioner believes it highly significant, that except for cases involving conduct on the high seas, or conduct in non-civilized lands, and cases involving penalties imposed for breaches of duty arising from citizenship, nationality, or domicile, he so far has been unable to find a decision in any State punishing conduct by a defendant who remains beyond the Forum's boundaries for the entire duration of his conduct, UNLESS

(1) the defendant intended harm to the interests of the State of the Forum; "Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power.". 221 U. S. 280 (at p. 285) Strassheim vs. Daily, 55 Led. 735.,

or (2) the defendant was violating the laws of the State where he was engaged in such conduct and this unlawful conduct, by the ordinary rules of proximate cause and foreseeability, resulted in consequences in the State of the Forum which that State chose to denote illegal. (See 102 Kansas 503, State vs. Wellman, 170 P. 1052; 87 Ohio State 72, In Re Poage, 100 NE 125; 89 Kansas 430, Re Fowles, 131 P. 598

> ". . . . It (a State) cannot provide for the punishment as crime, of acts committed beyond the State boundary, because such acts, if offenses at all, must be offenses against the sovereignty within whose limits they have been done. But if the consequences of an unlawful act committed outside the State have reached their ultimate and injurious result within it, it seems that the perpetrator may be punished as an offender against such State".
> COOLEY, CONSTITUTIONAL LIMITATIONS, 8th. Ed. p. 249.

In the first category fall the bulk of the so-called "Constructive Presence" cases which, predominantly, if not wholly, involve cases where the defendant was connected with some person or object in the State of the Forum in such a manner that by the conventional rules of Agency, this person was his Agent or this object his instrumentality. And it is only in this class of cases that the States enacting the "Uniform Extradition Act", including North Carolina (G.S. 15-60) and Virginia (Code 19-43) feel an obligation to honor Extradition requests.

In the second category fall the cases where a person assaulted in one State dies in another State; where a libel in one State is, without the intent of the defendant, republished in the State of the Forum; cases where a nuisance in a stream is carried by the stream into another State, and perhaps others. Basically, these cases represent an INTERSTATE aspect of the familiar rule that a person violating the laws of the State in which he acts is liable in damages for the proximate consequences of his act to any person injured as a result.

While the State of North Carolina will punish a person who, while in North Carolina, sets in motion a force which

culminates in a crime in another State, it will not do so unless the defendant's conduct in North Carolina is in itself unlawful. (G.S. 15-132). Also, according to the case of 191 Md. 586, State vs. Kriss, 62 A. (2nd.) 568, the State of New York will not honor requests for extradition of its subjects who have intentionally harmed the interests of another State unless the subject's conduct was also forbidden by the law of New York. The unfairness of punishing a person for what his own State says he can do, needs no demonstration.

So where the defendant intended no harm to the interests of the Forum, and was in complete compliance with the laws of the State in which he was acting or failing to act, the mere fact that his acts are followed by consequences in the State of the Forum which that State sees fit to forbid does not give the State of the Forum power to punish for these acts. 213 U. S. 347 American Banana Co. vs. United Fruit Co., 53 LEd. 826; 73 Ark. 428, Beatty vs. State 84 SW 477.

It is within the second category where the defendant was violating the laws of the State in which he was present, that all of the non-support cases relied upon by the prosecution here fall. In some of these cases the defendant was formerly domiciled in the Forum and had left and abandoned the child there prior to the date of the offense, or had sent the child into the State intentionally. (181 N. C. 597, State vs. Beam; State vs. Sanner, (Ohio 1910) 90 NE 1007; 26 LRA (NS) 1093; State vs. Gilmore, (Kansas 1913) 129 P. 1123; 47 LRA (NS) 217; Chase vs. State, (Fla. 1927), 113 So. 103; 54 ALR 271; 237 N. Y. 483 People vs. Brown, 143 NE 653; Dyer vs. State (Okla.) 52 P. 2nd) 1080; Sikes vs. State, (Ga.), 139 SE 87. Whether these facts are sufficient to distinguish them from the case at bar it is not necessary to decide, for in these, and all the other cases relied upon

by the prosecution as well, the child was legitimate, and the defendant was violating the laws of his residence and thereby caused the child's presence in the State of the Forum. State vs. Wellman, Kansas (1918) 172 P. 41; LRA 1918D, 949; Ex-Parte Heath, 87 Mont. 370, 287 P. 636; Osborne vs. Harris, 115 Utah 204, 203 P. (2nd.) 917; Re Fowles, (Kansas 1913) 131 P. 598; 47 LRA (NS) 227.

All the cases relied on by the prosecution had this background; support was required by the laws of both States, and the Court was trying to avoid a rule of law under which a defendant could avoid punishment contrary to the wishes of both States; avoid punishment by the Forum because he was a non-resident, and avoid punishment by his Domicile because the child was there a non-resident. Nevertheless, not all States were willing to go so far even in the case of legitimate children and even though support was required by the laws of both States. 171 La. 919, State vs. Hopkins, 132 So. 501; 200 Ill. App. 428, People vs. Herrick; 36 Nev. 487 Exparte Kuhns, 137 P. 83 50 LRA (NS) 507; compare 30 Pa. Dist. 187 Commonwealth vs. Sprenkle, where the Legislature felt lack of power when the defendant was domiciled out of the State.

Therefore, under the Due Process and Full Faith and Credit doctrine of Territorial Jurisdiction, since the defendant here was not present in North Carolina at the time of the offense, and engaged in no conduct which was unlawful under the law of Virginia, and did not intend to violate the laws of North Carolina or any other State, the imposition of punishment (Judgment) by the State of N. C. was constitutional error.

The Supreme Court of N. C. based its decision on the opinion that "Immoral Conduct" which caused the child's presence in the State of the Forum (N. C.) is just as suf-

ficient as unlawful conduct. The defendant most respectfully contends that, until the law states otherwise, there is room for a difference of opinion about morals, and no other court has yet held that a moral breach in one State, in the absence of an intention to violate the laws of the Forum, is sufficient to give rise to Constructive Presence in the Forum. Even so, by the ordinary rules of proximate cause, the presence of the mother in N. C. and her non-support cannot be attributed to the alleged intercourse of the defendant with her. If, as the prosecution contends, the mother went back to N. C. to get support, the cause of her presence there was failure to support, not the intercourse. And since the law of Virginia absolves the defendant of all duty to support and places it on the mother, the cause of her presence in N. C. was the law of Virginia and not the defendant. If defendant caused her to come into N. C. by withholding support from her, then every other resident of Virginia is equally guilty. And surely, a person laboring under a duty to support, cannot, merely by crossing over a State line into another State, shift this burden from her own shoulders to that of anybody else. Surely it cannot be the law that a person, in complete compliance with the laws of his Domicile and the State of his presence, is punishable in every State of the Union where his lawful conduct may have consequences, no matter how remote and unforeseeable, merely because his lawful acts might be proclaimed immoral by another's ethics.

But aside from State Courts, the decisions of this Court (the Supreme Court of the U. S.) forbid the imposition of this punishment. The defendant has always been domiciled in Virginia, and the laws of that State absolved him of any duty of support of the illegitimate child. And, according to the decisions of this Court, these two facts, or either of them, forbid punishment by

the State of North Carolina. The opinion in 290 U. S. 202, (212) Yarbrough vs. Yarbrough, 78 LEd. 269 (276) states categorically that only the State of a person's domicile has power to impose a duty of support of a child;

"Upon residents of that State it could impose duties for her benefit. Doubtless, it might have imposed upon her grandfather, who was resident there, a duty to support Sadie. But the mere fact of Sadie's residence in South Carolina does not give that State the power to impose such a duty upon the father who is not a resident and who long has been domiciled in Georgia".

Further, this opinion, and others as well, hold that where a relationship between parties occurs in one State and gives rise to rights, privileges, and duties there, the fact that one of the parties is a resident of, or moves to, another State, although sufficient to empower the State to burden this resident, is not sufficient to give this State the power to abrogate the privileges of, or impose additional burdens upon, the other party, especially when he remains in the former State. 213 U. S. 52, Atchison, Topeka & S. F. R. Co. vs. Somers; 53 L. Ed. 695; 234 U. S. 149 New York Life Ins. Co. vs. Head, 58 LEd. 1259; 234 U. S. 542, Western Union Telegraph Co. vs. Brown, 58 LEd. 1457; 237 US 531, Royal Arcanum vs. Green, 59 LEd. 1089.

The prosecution contends that the Yarbrough case (290 US 202) is distinguishable because it was based on res judicata principles, and that its rule applies only to Judgments. This the defendant respectfully denies; (1) In the Yarbrough case the court refused to hold that the decision would be the same if the father were domiciled in South Carolina. But if res judicata were the basis, the conclusiveness of a Judgment on personal service should not depend upon the parties retaining the same domicile. (2) It was objected that the minor was

not a party to the Georgia decree and could not be bound by it. The opinion acknowledged that it was not a party, but stated that, since the law of Georgia gave the child no independent right of support and all support must come as an incident to proceedings involving its parents, the child is bound by representation. But since the child was asserting in South Carolina her own rights given her by the law of that State, and was not asserting any incidental or representative rights derived through the mother under Georgia law, it was not the Judgment, but the law of Georgia—the domestic law providing that a father, who by order of the Court in a suit between him and his wife settle support arrangements between themselves, cannot be later called upon by the child—which underlies the Yarbrough decision. If the child's independent right of support was not in issue in the Georgia suit, then res judicata is not sufficient to bar it from being put in issue later.

Further the dissenting opinion insisted only that South Carolina had a right to seize the property in that State, and did not profess to contend that South Carolina could impose criminal, liability. The non-support cases approved by the dissent, as the subsequent language shows, were cases where the defendant moved from a domicile common to him and his wife and child. But in the case at bar, it was the mother who moved, not the defendant. Here it is the mother in the case at bar who is avoiding the law of their common residence, not the defendant.

The prosecution relies on RESTATEMENT, CONFLICT OF LAWS, Section 456. This Rule was no doubt pronounced on the assumption that all States of the Union impose support duties on fathers of bastards. Aware that only criminal proceedings are usually provided for support of illegitimate children, and that under conventional rules the State of the child could not en-

force support duties of another State in a criminal proceeding, the author felt they had no alternative—if a hiatus of justice was to be avoided—than to apply the law of the child's domicile. If both States have support duties it matters little, in practical effect, whether title to the law involved be awarded to the State of the parent or to the State of the child. But when the State, to whose laws the parent is accustomed to look, absolves him of all duty of support, then grave constitutional questions are involved.

The RESTATEMENT, CONFLICT OF LAWS, in Section 55, makes it expressly clear that the Constitution of the U. S. requires certain exceptions to its maxims, and that it did not at all purport to exemplify the situations giving rise to these exceptions. (See 320 U. S. 439, (442). Magnolia Petroleum Co. vs. Hunt, 88 LEd. 156, Footnote 5).

The prosecution contends that, to protect itself, North Carolina must be allowed to procure support for the child. Such an argument is not pertinent in this case. The child here was not indigent, but was being supported by the family of the mother through her procurance pursuant to a duty imposed upon her by the laws of N. C. (G. S. 49-2, and G. S. 49-4). The proceedings here were instituted by the mother, and not by the Superintendent of Welfare (GS 49-5). The purpose and the effect, of the decision of the Supreme Court of N. C. was to exonerate the mother and remove from her a burden placed there by both Virginia and North Carolina, and place it upon the defendant, a resident of Virginia.

But even if the child had been indigent, it does not follow that the defendant must be the one to support it. Under the law of his State (Virginia) the child is nullius

filius and the defendant has no more responsibility for its support than counsel for the respondent. Also, such an argument proves too much.

This case is not sui generis. If the decision of the Supreme Court of N. C. be good law, then those States which, even in regard to legitimate children, make non-support a crime only when the child is indigent, must inform its citizens that, regardless of any agreement or settlement with the mother, and no matter how greater the mother's means than his, no matter how well the child is being provided for, they travel at their peril in the State of North Carolina where they will be required, not to protect the State, but to exonerate the mother. And, of course, a State which feels that a duty of support should stop at an earlier age than the State of N. C., considers proper, or feels that some limitation should be placed on the amount of the father's property subject to being reached, will be no less thwarted.

And if criminal proceedings are proper, then civil ones are too. Therefore, the consequence of the decision of the Supreme Court of N. C. is that property in Virginia, no matter how necessary for the support of Virginia residents, would, upon presentation of a N. C. Judgment, be sacrificed for the benefit, not only the people of N. C., but also for the very person who, before the alleged intercourse took place in Virginia, was informed by that State (Virginia) that the burden of any consequences from the act of sexual intercourse rested on her (the mother) alone.

II

The Supreme Court of North Carolina erred in holding and declaring that the General Statutes of North Carolina (G. S. 49-2, and G. S. 49-3) are constitutional and are applicable to the case at bar.

Defendant strenuously insists that these two General Statutes of N. C. are unconstitutional and void under the Due Process Clause of the 14th. Amendment of the Constitution of the U. S., and that they do not, and cannot, apply to the defendant in this case who was at the time of the alleged offense, and continuously since that time, has been a non-resident of North Carolina and that he has never been within the bounds of North Carolina until he was arrested in Caswell County, North Carolina on or about Dec. 19-1951 under the old warrant sworn out on July 20-1951 charging him with the offense of non-support in North Carolina of an illegitimate child born in North Carolina on June 17-1951; that the defendant has had his sole domicile, residence and citizenship within the State of Virginia, and the prosecutrix (mother) was likewise living, domiciled, residing, and had her citizenship within the State of Virginia where, and when, all of the acts of sexual intercourse between said parties took place, and the mother came over from Virginia to Caswell County, N. C. on March 1st, 1951 voluntarily and of her own free will and accord and without any suggestion, plan, arrangement, or request from the defendant to do so and for the sole purpose of giving birth to the baby at her aunt's home in Caswell County, North Carolina; that the law of Virginia imposes upon the father of an illegitimate child no obligation or penalty whatever, either civil or criminal, for the support of the child.

The State of North Carolina has no extra-territorial jurisdiction in this case and it has no power or authority to make or to declare that a crime in North Carolina which is not a crime, and any attempt to do so violates the Due Process Clause.

The Supreme Court of N. C. cites the case in 210 N. C. 271 State vs. Spillman but there it will be seen that all

parties were residents of and were living within the State of N. C. and there was no other or outside State involved where sexual relations came into the picture as there is in the case at bar. In that case the defendant offered no evidence while in the case at bar the defendant offered evidence of the Common Law governing in the State of Va.; in that case all of the acts of sexual intercourse took place within N. C., while in the case at bar all of the acts of sexual intercourse took place in Virginia; there, while the Due Process Clause was raised and set up by the defendant, who contended that G. S. 49-2 contravened the Due Process Clause, it was set up on entirely different grounds and for other reasons and on a different state of facts.

III

The Supreme Court of North Carolina erred, when under Article 4, Section I of the Constitution of the United States, and under the U. S. Revised Statutes, Section 905 (28 USCA § 1738) they failed to recognize the applicability of and failed to give FULL FAITH AND CREDIT to the law of Virginia relative to the non-liability of a father in Virginia to support his illegitimate child.

The case of 305 U. S. 32 (39) Davis vs. Davis is in point. With the law of Virginia proven and admitted in evidence (R. p. 20) of which the Superior Court took judicial notice (R. p. 26) the Supreme Court of North Carolina should have recognized the applicability of the law to the facts in the case at bar and should have given the law of Virginia FULL FAITH AND CREDIT under both Art. 4, Section I of the Constitution of the U. S. and also under the U. S. Revised Statutes Section 905 (28 USCA § 1738). This it failed to do as shown in the opinion.

CONCLUSION

In the light of the glaring errors of the State Courts below, outlined in Petitioner's Brief, it is most respectfully urged that no more deserving or appealing cause for review by this Court of Violation of the Due Process Clause, and the Full Faith and Credit Clause, of the Constitution of the United States, could be presented. While the facts and setting of this case are very rare and most unique it is no time for the State Courts to lose their bearings, and be swept away from, and forget, the basic, fundamental, Constitutional rights which every citizen, even though he be a poor farmer's boy living in the State of Virginia, is lawfully entitled to. The same Constitutional rights apply in all cases whether they be unique and rare or common and usual.

Defendant realizes that our State Courts are generally loathe to hold or to declare any Act of their State legislature unconstitutional, and neither is he ignorant of the fact that State Judges frequently think of their State Laws as the best in the world where Local Public Policy Formula arises in cases growing out of a Two-State problem, or Foreign Facts, in the Conflict of Laws, for it was Justice Holmes who truly and aptly said;

> "One cannot be wrenched from the rock crevices into which one has grown for many years, without feeling that one is attacked in one's life".
>
> (Holmes, Collected Legal Papers,
> Year 1920, page 311.).

It is respectfully submitted that this case calls for the exercise by this Court of its jurisdiction under Section 1257 (3) of the U. S. Judicial Code and that to such end a Writ of Certiorari should issue to the Supreme Court of North Carolina.

WM. REID DALTON,
Attorney for Petitioner,
(Reidsville, N. C.)

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No. 489

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1953

HOWARD SEABOY TICKLE, Petitioner

vs.

STATE OF NORTH CAROLINA, Respondent

Brief of the State of North Carolina, Respondent, Opposing Petition for Writ of Certiorari.

STATEMENT OF THE CASE

The petitioner, Howard Seaboy Tickle, seeks, by writ of certiorari, to have the Supreme Court of the United States review a decision of the Supreme Court of North Carolina affirming a judgment of the Superior Court of Caswell County, imposing a sentence of six months in the common jail of Caswell County to be assigned to work the roads, suspended on the condition that the petitioner support his illegitimate child in a manner more specifically set out on page 52 of the record. The judgment was based upon a verdict that the petitioner being the father of an illegitimate child did wilfully neglect and refuse to provide for the support of the said child. The opinion of the Supreme Court of North Carolina was filed on September 23, 1953, and is reported as STATE v. HOWARD SEABOY TICKLE, 238 N. C., 206, ... S. E. 2(d) Ed. .....

FACTS

This is a criminal prosecution upon a bill of indictment charging that the petitioner on December 25, 1951, at and in Caswell County, North Carolina, after notice of paternity and demand for support, did unlawfully and willfully refuse to provide for the support of his illegitimate child begotten upon the body of Ruby Elizabeth Hamlett contrary to the statutes of North Carolina.

The evidence tends to show that the prosecutrix, Ruby Elizabeth Hamlett, had known the petitioner since August, 1949. She was working in the State of Virginia at the time and making frequent visits to her home in Caswell County, North Carolina. In October, 1950, the petitioner, Howard Seaboy Tickle, a resident of the State of Virginia, began having intercourse with the prosecutrix and she became pregnant the last of October, 1950. In March, 1951, the prosecutrix moved from the State of Virginia back to the home of her relatives in Caswell County, North Carolina, and gave birth to her baby on June 17, 1951. The child was begotten in the State of Virginia. Evidence of petitioner's admission of paternity appears in the record.

On July 13, 1951, the prosecutrix wrote a registered letter to the petitioner at his address in Danville, Virginia, advising him of the birth of the child and asking that he meet her at her attorney's office in Yanceyville, North Carolina, on July 20, at ten o'clock to make arrangements about the support of his child. The return receipt of the letter was dated July 17, 1951, with the petitioner's signature thereon. The petitioner made no reply to this letter and did not go to Yanceyville at the appointed time.

On July 20, 1951, the prosecutrix swore out a warrant against the petitioner, but the authorities in the State of Virginia declined to order that the petitioner be sent to North Carolina for trial on the ground that under their laws no crime had been committed in Virginia and that the petitioner was not a fugitive from justice from North Carolina.

About December 19, 1951, the petitioner came over to Caswell County, North Carolina, on a hunting trip and was arrested on a charge of reckless driving and was also arrested under the non-support warrant sworn out on July 20, 1951. The petitioner

was convicted under the non-support warrant on July 22, 1952, in the Recorder's Court of Caswell County, and from the judgment pronounced he appealed to the Superior Court of Caswell County. At the February 1953 Special Term of the Superior Court of Caswell County the petitioner was tried and convicted, not under the old non-support warrant, but under a bill of indictment; and from the verdict and judgment pronounced thereon the petitioner appealed to the Supreme Court of North Carolina. In an opinion reported as STATE v. HOWARD SEABOY TICKLE, 238 N. C., 206, ... S. E. 2(d) Ed. ....., the Supreme Court of North Carolina affirmed the judgment of the Superior Court of Caswell County holding that the offense of wilful failure and refusal to support the illegitimate child was committed in the State of North Carolina and the petitioner having voluntarily set in motion the chain of circumstances resulting in the commission of the offense in North Carolina, the courts of the State of North Carolina have jurisdiction of the offense.

ARGUMENT

I.

THE SUPREME COURT SHOULD REFUSE TO GRANT THE WRIT OF CERTIORARI, FOR THE REASON THAT NO FEDERAL QUESTION IS PRESENTED AS THE STATE OF NORTH CAROLINA CLEARLY HAD JURISDICTION TO PROSECUTE THE PETITIONER FOR THE COMMISSION OF A CRIME WITHIN ITS BORDERS, THE PHYSICAL PRESENCE OF THE ACCUSED AT THE PLACE WHERE THE CRIME WAS COMMITTED NOT BEING ESSENTIAL TO JURISDICTION.

Under the laws of the respondent State of North Carolina the petitioner has committed a crime within its borders. It is true that the child was begotten in the State of Virginia, but the only prosecution contemplated by the Legislature of the respondent State of North Carolina is that grounded on the willful

neglect and refusal of any parent to support and maintain his or her illegitimate child, the mere begetting of the child not being denominated a crime. General Statutes of North Carolina 49-2, 3, STATE v. DILL, 224 N. C., 57, 29 S. E., 2(d) Ed. 145, STATE v. STILES, 228 N. C., 137, 44 S. E., 2(d) Ed. 728. A violation of G. S. 49-2 constitutes a continuing offense, STATE v. JOHNSON, 212 N. C., 566, 194 S. E. 319, and may be perpetrated even though the petitioner be physically absent from the state. The petitioner was prosecuted for the crime of non-support in North Carolina, and not for begetting an illegitimate child in Virginia. Non-support is a crime of omission rather than commission, and, therefore, the petitioner's absence from the State of North Carolina at the time the child was begotten and subsequent thereto should not hinder his prosecution for willful non-support nor deprive the courts of the respondent State of North Carolina of jurisdiction over the crime, the subject matter of the action, when these courts properly acquired jurisdiction over the person of the petitioner. PETTIBONE v. NICHOLS, 203 U. S. 192, 51 L. Ed. 148, 22 C. J. S. Criminal Law, Section 144.

A non-resident may be guilty of the offense of failing to provide for a wife or minor child living within the state, even though he was never within the state during the time laid in the indictment; and this rule has been held to apply even though the wife and children came within the state without his knowledge and consent, where his own misconduct in another state compelled his wife and children to leave him. 22 C. J. S. Criminal Law, Section 136 b, pages 220 and 221.

In the case of COMMONWEALTH v. LANOUE, 95 N. E. 2(d) Ed. 925, 927, the Supreme Court of Massachusetts held that the begetting of an illegitimate child, which is a punishable offense in that state, is not within the jurisdiction of the courts of Massachusetts where the complaining witness and the defendant engaged in an act of sexual intercourse in the State of Rhode Island. The defendant was a state resident of the State of Rhode Island, but as to the offense of failing to support the illegitimate child the court had this to say:

> "Begetting was first made a punishable offense by St. 1913, c. 563, Section 1, now appearing in G. L. (Ter. Ed.) c. 273,

Section 11. It is distinct from the offense of failing to support an illegitimate child which is now set forth in c. 273, Section 15. Failure to support may take place in and be punishable by the courts of the Commonwealth although the begetting is accomplished elsewhere. See Commonwealth v. Dornes, 239 Mass. 592, 132 N. E. 363; Commonwealth v. Herrick, 263 Mass. 25, 160 N. E. 531; Commonwealth v. Booth, 266 Mass. 80, 165 N. E. 29; Commonwealth v. Gross, 324 Mass. 123, 85 N. E. 2d 249."

The petitioner does not have to be within the state to be convicted of the non-support of his wife, which is cited by way of analogy. See PEOPLE Ex Rel HARTNETT v. RYAN, 56 N. Y. S. 2(d) 798 and see also OSBORNE v. HARRIS, WARDEN, 203 Pac. 2(d) Ed. 917.

In the case of STATE v. WELLMAN, 102 Kan. 503, 170 Pac. 1052, the defendant, a resident of Missouri, was convicted for failure to support his minor child in Kansas. Affirming the conviction the Court said at page 1055:

"The defendant also insists that the statute on which the prosecution is based does not apply to him, because of his absence from the state at the time of the commission of the alleged offense. He argues that, while it is possible for one who is outside of the state to violate its criminal laws, this can only result under the conditions named in the statute, which reads:

" 'Every person being without the state, committing or consummating an offense by an agent or means within the state, is liable to be punished by the laws thereof in the same manner as if he were present and had commenced and consummated the offense within the state.' Gen. Stat. 1915, 7930, Code Cr. Proc. 20.

"This statute is but declaratory of the common law. 12 Cyc. 208; 8 R. C. L. 101. It does not purport to enumerate all the conditions under which a person absent from the state may become an offender against it's punitive laws. If the failure of a parent who is outside of the state to take any action at all, with respect to a child who is in the state, and to whom he owes an affirmative duty, is not to be regarded as consummating an offense by an agent or means within the

state, and therefore not within the purview of the statute quoted, it does not follow that he is not amenable to the law here invoked. The section under which the prosecution is brought reads as follows:

" 'Any parent who shall, without lawful excuse, desert or neglect or refuse to provide for the support and maintenance of his or her child or children under the age of sixteen years in destitute or necessitous circumstances, shall be guilty of a crime and, on conviction thereof, shall be punished by imprisonment in the reformatory, or penitentiary, at hard labor, not exceeding two years.' G. S. 1915, 3410.

"The offense here created is essentially one of omission, and the aid of supplementary legislation is not needed to bring a person who is outside of the state within its condemnation.

"Such an offense as desertion or failure to provide for a wife or children is, however negative, the omission of a duty, and therefore venue depends on the question where the omission to perform that duty occurs; and where the husband abandons his family and they become destitute, he owes the duty of support at the place of their residence and nowhere else; accordingly, it is usually held that the breach of duty occurs there, and the venue should be laid there. 8 R. C. L. 310.

"While a statute has no extra-territorial force, and one cannot be indicted here for what he does in a foreign country, the making of a contract in a foreign country may, as in this case, create a condition operative in this country, under which acts of omission or commission can be punished here. Headnote, UNITED STATES v. NORD DEUTSCHER LLOYD, 223 U. S. 512, 32 Sup. Ct. 244, 56 L. Ed. 531.

"This question has already been determined by this court against the defendant (In re: FOWLES, 89 Kan. 430, 131 Pac. 598, 47 L. R. A. (NS) 227), and the argument in his behalf amounts to a request to review that decision. We are satisfied with the law as there declared, and adhere to the conclusion already reached."

In the case of STATE v. SANNER, 81 Ohio St., 393, 90 N. E. 1007, a non-resident defendant was indicted for failure to provide for his minor children. It was held that a parent may

be guilty of the crime of failing to provide for his minor children, although he is a resident of another state during the time laid in the indictment, and the place of the crime is in the county where the child is when the complaint is made, for as to some crimes the physical presence of the accused at the place where the crime is committed is not essential to his guilt. Among other cases cited is BURTON v. U. S., 202 U. S. 344, 26 Supreme Court, 688, 50 L. Ed. 1057, containing the statement that: "The Constitutional requirement is that the crime be tried in the state and district where committed; and not necessarily in the state or district where the party committing the crime appeared to be at the time."

The principle that one may be criminally liable in the state where the evil results, though he is beyond the jurisdiction when the train of events is started, is nothing new to the law. The Uniform Criminal Extradition Act takes recognition of this principle and supports the view that the respondent State of North Carolina has jurisdiction over the crime in this case. The Uniform Criminal Extradition Act has been adopted by at least thirty-two states. Both North Carolina and Virginia have adopted it. General Statutes of North Carolina 15-55 through 15-84. Code of Virginia 1950, Vol. 4, 19-37 through 19-70. The General Statutes of North Carolina, Chapter 15, Section 60 provides in substance that the Governor of this state may surrender any person in this state charged with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The section applies even though the accused was not in the state at the time of the commission of the crime, and has not fled therefrom. The corresponding section in the Virginia Act is found in the Code of Virginia 1950, Vol. 4, Chapter 4, Article 2, Section 19-43. The Virginia authorities declined extradition in the instant case on the ground that no crime had been committed in Virginia and that the petitioner was not a fugitive from justice from North Carolina. (R. p. 2). But this would in no wise prevent the application of the Uniform Criminal Extradition Act.

STATE ex rel GILDAR v. KRISS, 191 Md. 562, 62 At. 2(d) Ed. 568 presents the question of the constitutionality and

application of Section 18 of the Uniform Criminal Extradition Act, which provides for extradition of persons not present in the demanding state at the time of the commission of the crime. The facts concerned a habeas corpus proceeding by the State of Maryland, on relation of Sam Gildar, for release from the custody of Henry J. Kriss, captain of detectives of Baltimore, under an extradition warrant. From an order remanding the petitioner to the respondent's custody, the petitioner appealed. It appeared that the petitioner was charged on or about July 23, 1947, in Guilford County, North Carolina with conspiring to violate the laws of North Carolina by engaging in and carrying on the business of transporting spirituous liquors from Baltimore, Maryland into Guilford County, North Carolina for the purpose of sale contrary to the laws of North Carolina. The petitioner was not present in North Carolina at the time of the commission of the crime and neither had he fled from the state. In passing upon the constitutionality and application of Section 18 of the Uniform Criminal Extradition Act, the Maryland Court of Appeals, quoting from STRASSHEIN v. DAILEY, 221 U. S. 280, 31 Supreme Court 558, 560, 55 L. Ed. 735, said: "'Acts done outside a jurisdiction but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should succeed in getting him within its power.'"

The petitioner in the *Gildar case, supra,* contended that the provision in Article IV, Section 2 of the United States Constitution is the only provision in the Constitution for inter-state extradition and, since it is applicable only to fugitives from justice, the states are thereby denied power of extradition of any other interstate criminals. In reply to this contention the Maryland Court of Appeals said:

> "We find no support in principle or in authority, for this contention. The manifest purpose of the Constitutional provision was to impose a duty upon the states to surrender fugitives from justice, not to confer upon other interstate criminals immunity from extradition. This provision is applicable only when the accused was present in the demanding state at the time of the commission of the crime and there-

after fled from the state. HYATT v. PEOPLE OF THE STATE OF NEW YORK, ex rel CORKRAN, 188 U. S. 691, 23 Supreme Court 456, 47 L. Ed. 657; Article 41, sectio 15. Absence of any constitutional provision for extradition of other interstate criminals leaves that subject within the reserved powers of the states." Citing INNES v. TOBIN, 240 U. S. 127, 134, 135, 36 Supreme Court 290, 292, 60, L. Ed. 562.

The petitioner, Howard Seaboy Tickle, in the instant case contends that since he has committed no crime in the State of Virginia, the State of North Carolina is thereby deprived of jurisdiction to prosecute him for the commission of a crime within its borders. The Maryland Court of Appeals in the *Gildar case, supra,* commented on the effect of any difference between the laws of Maryland and of North Carolina. On this the Court said:

> "Petitioner, and also the lower court, have animadverted upon failure of the Legislature to follow the New York Act by inserting in section 18 words limiting extradition to acts which would be punishable by the laws of Maryland if the consequences had taken effect there. It is not for us to say what the Legislature should have done. The words of section 18 are clear, and it is at least understandable that the Legislature may wish to prevent Maryland from being made a base for violation of the North Carolina liquor laws, even though those laws are not the same as Maryland laws."

In expressly upholding the constitutionality of the Uniform Criminal Extradition Act the Maryland Court of Appeals said:

> "The Uniform Criminal Extradition Act has been enacted in thirty-two states and Hawaii. In none of these jurisdictions has it been held unconstitutional; in five it has been held constitutional by state courts and the contention now made by petitioner has been rejected. ENGLISH v. MATOWITZ, 148 Ohio St. 39, 72 N. E. 2(d) Ed. 898; ex parte Campbell, *supra,* 147 Neb. at pages 825, 826, 25 N. W. 2(d) Ed. 419; ex parte Morgan, California App 194 Pac. 2(d) Ed. 800; CASSIS v. FAIR, *supra;* ENNIST v. BADEN, *supra.*"

Thus many states, including the State of Virginia, have recognized by their statutory law that the courts of a demanding state may have jurisdiction over a crime even though the accused was not in the demanding state at the time of the commission of the crime, and has not fled therefrom.

The courts of the state of the petitioner's residence, Virginia, in an analogous situation, have upheld the principle that a state has jurisdiction over a crime even though the train of events resulting in the crime were set in motion from outside the jurisdiction. The case of TRAVELERS HEALTH ASSOCIATION et al v. COMMONWEALTH et al, 51 S. E. 2(d) Ed. 263, 188 Va. 877, affirmed, 70 Supreme Court 927, 339 U. S. 643, 94 L. Ed. 1154, was a proceeding by the Virginia State Corporation Commission to restrain a Nebraska association from selling securities in the State of Virginia until issued a permit by the Virginia State Corporation Commission. The entire transactions were completed by use of the mails from the State of Nebraska. On the question of jurisdiction the Supreme Court of Appeals of Virginia held that it is a commonplace of criminal liability that a person may be charged in the place where the evil results, though he is beyond the jurisdiction when he starts the train of events of which that evil is the fruit citing numerous decisions of the Supreme Court of the United States. See, also, STATE v. VETRANO, 117 At. 460, 121 Maine 368.

There is abundant authority dealing with analogous situations supporting the respondent's contentions that no Federal question is presented in this case as a state clearly has jurisdiction to prosecute the petitioner for the commission of a crime within its borders, the physical presence of the accused at the place where the crime is committed not being a jurisdictional prerequisite.

In U. S. vs. STEINBERG et al, N. Y. C. C. A. 62 Fed 2(d) 77 (1932) the only point of consequence was whether Section 215 of the Criminal Code (18 U. S. C. A. Section 338) covers the case of a letter posted by the accused in Canada, and received by the addressee in the United States. The Court held the question was concluded by SALINGER v. LOISEL, 265 U. S. 224, 44 Supreme Court 519, 68 L. Ed. 989, where it was held that the

accused might be indicted and tried at the place where the letter was received. The Court said:

> "It has long been a commonplace of criminal liability that a person may be charged in the place where the evil results, though he is beyond the jurisdiction when he starts the train of events of which the evil is the fruit. STRASSHEIM v. DAILEY, 221 U. S. 280, 284, 285, 31 Supreme Court 558, 55 L. Ed. 735; LAMAR v. U. S. 240, U. S. 60, 64, 65, 66; 36 Supreme Court 255, 60 L. Ed. 526; FORD v. U. S. 273 U. S. 593, 620, 621, 47 Supreme Court 531, 71 L. Ed. 793. *The Constitutional question is frivolous.*" (Emphasis added.)

A petition for a writ of certiorari was denied in 53 Supreme Court 526, 289 U. S. 729, 77 L. Ed. 1478.

In U. S. ex rel HATFIELD v. GUAY, New Hampshire, 11 Fed. Supp. 806, the petitioner was arrested on a warrant issued by a United States Commissioner charging that he was a fugitive from justice from the Dominion of Canada. The petitioner was charged with the crime of false pretenses and larceny of a large sum of money from the Dominion of Canada. The petitioner had given the false testimony in the United States in order to collect a sum of money for the purported sinking of his vessel by a German submarine. In denying the petitioner's application for a writ of habeas corpus, the Court said:

> "If there was testimony before the United States Commissioner reasonably tending to establish that Hatfield, through false and fraudulent statements set in motion in the United States, obtained the payment of money in Canada, the latter country has jurisdiction of the crime.
>
> "In the case of FORD v. U. S., 273 U. S. 593, 47 Supreme Court 531, 71 L. Ed. 793, Chief Justice Taft in an exhaustive opinion quotes with approval the following from Moore's International Law Digest, Vol. II, page 244: 'The principle that a man who, outside of a country, willfully puts in motion a force to take effect in it is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the method which modern invention has furnished for the performance of criminal acts in that

manner has made the principle one of constantly growing importance and of increasing frequency of application.'"

The case was modified on other grounds at 87 Fed. 2(d) 858 (C.C.A.). A petition for a writ of certiorari was denied at 57 Supreme Court 669, 300 U. S. 678, 81 L. Ed. 883. A petition for a rehearing was denied at 57 Supreme Court 793, 301 U. S. 718, 81 L. Ed. 1365.

In UPDIKE v. PEOPLE, 18 Pac. 2(d) Ed. 472, 92 Col. 125, the defendant, *Updike*, a resident of Idaho, by false representations in letters and telephone conversations obtained a sum of money from one Zadra in Colorado. The defendant was found guilty in Colorado of obtaining money by false pretenses. The Supreme Court of Colorado said:

"A crime is an injury to the state where it is committed, and the courts of that state have jurisdiction thereof; this is not disputed. In 16 C. J. at pages 190, 191, section 273, it is said: 'The general rule is that the crime of obtaining money or property by false pretenses is completed where the money or property is obtained, and that, if the pretenses are made within one jurisdiction and the money or property is obtained in another the person making the representations must be indicted within the latter jurisdiction.'"

And at page 476:

"One may perpetrate an offense against a state or country upon whose soil he never touched a foot.

"But if the defendant, Updike, cannot be tried in Colorado for violating section 6930, C. L. 1921, he cannot be tried anywhere for it. We may safely assume that our sister state of Idaho has a statute making it a crime to obtain money by false pretense but it is idle to speculate whether a statute of that state would cover a case of this kind, or whether the courts there would hold that they have jurisdiction. The courts of that commonwealth may decide otherwise, as they have a perfect right to do, and the defendant would thereby wholly escape punishment for his fraudulent conduct. There is no rivalry between the states of Idaho and Colorado as to which shall enforce its own laws; each is supreme in its own jurisdiction and no constitutional question is presented either in the motion for a new trial or by assignment of error. All

we can say is that a crime was or was not committed in this state. It is not as if the venue had been improperly laid in one county, but the case could be tried in another. In effect, the plea to the jurisdiction here amounts to a complete plea in bar, as far as the courts of this state are concerned."

For other analogous decisions holding that where a crime is defined as causing certain prohibitive matter to be delivered by mail, the crime is committed in the jurisdiction where such matter is received through the mails. See SALINGER v. LOISEL (La.) 44 Supreme Court 519, 265 U. S. 224, 68 L. Ed. 989; HORNER v. U. S. N. Y., 12 Supreme Court 407, 143 U. S. 207, 36 L. Ed. 126; ESTABROOK v. KING, C.C.A. Mo. 119 Fed 2(d) 607.

The case of YARBOROUGH v. YARBOROUGH, 290 U. S. 202, 70 L. Ed. 269, relied upon by the petitioner does not decide the jurisdictional issue presented here. In that case, provision for the support and maintenance of a minor child had been made in a binding judgment in the State of Georgia, the state in which the father was domiciled. In that case this Court simply held that subsequently the courts of the State of South Carolina could not enter any decree modifying the judgment of the State of Georgia for upon that judgment the defendant was entitled to rely and be protected by the Full Faith and Credit clause of the Constitution of the United States.

II.

THE PETITIONER FAILED TO SET UP IN THE STATE COURTS ANY QUESTION OF FULL FAITH AND CREDIT UNDER ARTICLE IV, SECTION 1 OF THE CONSTITUTION OF THE UNITED STATES AND SUCH QUESTION CANNOT FOR THE FIRST TIME BE RAISED IN THIS COURT.

The Supreme Court on petition for a writ of certiorari will not consider questions not raised or disclosed by the record and which were not considered by the courts below. EDWARD

HINES YELLOW PINE TRUSTEES v. MARTIN (Miss.) 1925, 45 Supreme Court 543, 268 U. S. 458, 69 L. Ed. 1050.

In reviewing a judgment of a state court, the United States Supreme Court will not pass on any Federal question not shown by the record to have been raised in the state court or considered there. WILSON v. COOK, Ark. 1946, 66 Supreme Court 663, 327, U. S. 474, 90 L. Ed. 793.

A party who raised one question in the state court cannot come into this court from a state court and argue the question thus raised, and also another not connected with it which was not raised in any of the courts below. DEWEY v. Des MOINES, Iowa, 1899, 19 Supreme Court 379, 173 U. S. 193, 43 L. Ed. 665.

III.

THE RECORD DOES NOT SHOW THE EXISTENCE OF ANY FACTS UPON WHICH THE QUESTION OF FULL FAITH AND CREDIT COULD BE RAISED.

Full Faith and Credit only applies to the public acts, records, and judicial proceedings of other states. U. S. Constitution, Article IV, section 1. The case of DAVIS v. DAVIS, 305 U. S. 32, 83 L. Ed. 26, relied upon by the petitioner simply held that a final decree of absolute divorce in the State of Virginia must be given effect in the courts of the District of Columbia. Such a case is not in point and neither is it analogous with the instant case. The courts of North Carolina are not attempting to modify or vitiate any decrees entered by the courts of Virginia. The respondent State of North Carolina has simply prosecuted the petitioner for the violation of its criminal laws. The contention of the petitioner is like saying that because the State of Virginia has no statute requiring a father to support his illegitimate child then the State of North Carolina must not have one. Certainly the Full Faith and Credit clause of the Constitution of the United States does not require that all states have uniform criminal laws.

IV.

THE GENERAL STATUTES OF NORTH CAROLINA 49-2 AND 49-3 REQUIRING A FATHER TO SUPPORT HIS ILLEGITIMATE CHILD ARE CONSTITUTIONAL, AND THEIR APPLICABILITY TO THE CASE AT BAR HAS BEEN DISCUSSED UNDER POINT ONE RELATIVE TO THE JURISDICTION OF THE COURTS OF NORTH CAROLINA TO PROSECUTE THE PETITIONER FOR THE OFFENSE OF WILLFUL NON-SUPPORT.

It was held in STATE v. SPILLMAN, 210 N. C. 271, 186 S. E. 322, that G. S. 49-2 does not contravene the "Due Process" clause of the Fourteenth Amendment of the United States Constitution and Section 17, Article I of the North Carolina Constitution providing that no person shall be imprisoned but by the law of the land.

As to whether the statutes are applicable in the instant case has been covered under Point I where the authorities cited support the conclusion that the respondent State of North Carolina had jurisdiction over the crime.

CONCLUSION

The petitioner has failed to present any Federal question in this case. The respondent State of North Carolina clearly had jurisdiction to prosecute the petitioner for the commission of a crime within its borders, the physical presence of the accused at the place where the crime was committed not being a prerequisite to jurisdiction. The principle that one may put in motion a train of events resulting in a crime in another state is recognized by the statutory and case law of the states of the Union and by the decisions of this Court.

The petitioner failed to set up in the state courts any question of Full Faith and Credit under Article IV, Section 1 of the Constitution of the United States and such question cannot for the first time be raised in this Court. Furthermore, the

record does not show the existence of any facts upon which the question of Full Faith and Credit could be raised.

The respondent State of North Carolina had jurisdiction to prosecute the petitioner in this case. The statutes under which he was prosecuted are Constitutional and his petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Chapter 49, General Statutes of North Carolina—Bastardy

§ 49-2. Any parent who willfully neglects or refuses to support and maintain his or her illegitimate child shall be guilty of a misdemeanor and subject to such penalties as are hereinafter provided. A child within the meaning of this article shall be any person less than eighteen years of age and any person whom either parent might be required under the laws of North Carolina to support and maintain as if such child were the legitimate child of such parent.

§ 49-3. The provisions of this article shall apply whether such child shall have been begotten or shall have been born within or without the State of North Carolina: Provided, that the child to be supported is a bona fide resident of this State at the time of the institution of any proceedings under this article.

Chapter 15, General Statutes of North Carolina—Extradition

§ 15-60. The Governor of this State may also surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 15-57 with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

Chapter 4. Code of Virginia—Extradition

§ 19-43. The Governor may also surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 19-39 with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.